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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/330,384	06/11/1999	RICHARD E. GLIKLICH	OSC99-01	9339

7590 01/29/2004

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EXAMINER

RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
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2175

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/330,384

Applicant(s)

GLIKLICH, RICHARD E.

Examiner

Sam Rimell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 12-18, 20-29 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 10, 12-18, 20-29, 32-34 36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.

- 4) ☐ Interview Summary (PTO-413) Paper No(s): ____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

SAM RIMELL
PRIMARY EXAMINER

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Non-Election by Original Presentation: Newly presented claim 35 depends upon claim 1, which was non-elected following the election requirement of March 12, 2002. Accordingly, claim 35 belongs to the non-elected grouping, and is considered non-elected based upon the original presentation of the claims.

The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

Subject to the following paragraph, a claim in dependent form shall contain reference to a claim previously set forth and then specify a further limitations of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

Claims 32-34 are rejected under 35 USC 112, fourth paragraph, failing to make reference to a claim previously set forth. In particular, claims 32-34 depend upon cancelled claim 31. Since the true dependency cannot be determined, these claims cannot be further considered on the merits.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10, 12, 13 and 20-29 are rejected under 35 U.S.C. 102(e) as being anticipated by DeBusk et al. (U.S. Patent 5,991,728).

Claim 10: FIG. 4 discloses the step of obtaining an identification of a user (Login) and a privilege level (password). Individuals who have passwords have higher privilege levels than those who do not have passwords. FIG. 13 illustrates a search template which permits the

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selection of medical studies, which are primarily studies on the usage of pieces of surgical equipment. The user enters the desired study and other information, such as which doctors are to be compared in the study. FIG. 14 illustrates the clinical outcome and provides a comparison study between two doctors. The doctor comparison is based upon usage of medical equipment, but may also be based upon comparisons of those same doctors of "consumable medical supplies" (col. 29, lines 64-65) which includes the prescription of drugs by physicians. The data is output based upon the privilege level. Users who do not have passwords do not receive any data output as they are unable to log into the system, and thus have a lower privilege level than a user who does have a password.

Claim 12: FIG. 14 shows the user as being presented with a list of medical studies (two studies). The selection of the studies is based upon the input into the template of FIG. 13. The privilege level is associated with the display of data, as users who do not have a password have a lower privilege level and thus do not view any data, whereas users who do have a password have a higher privilege level and can view the display of FIG. 14. The last paragraph of claim 12 is entirely prefaced by "if" clauses and thus is entirely optional. Optional claim limitations are not necessarily exercised, and thus not limiting the claim unless positively claimed as being exercised.

Claim 13: FIG. 14 illustrates the comparison of doctors for the treatment of an ailment by surgery.

Claim 20: FIG. 7 illustrates the inputting and logging of medical information, which corresponds to receiving sets of medical information having specific values. When the log/save button (192) is pressed, the data is maintained. FIG. 4 illustrates the step of obtaining a password

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(Login) and privilege level (password). FIG. 13 illustrates a template for allowing a user to make selections of multiple characteristics (equipment types) and multiple doctors. Using a clinical algorithm, the display chart of FIG. 14 is produced, which compares a doctor to another doctor on the usage of medical equipment. The comparison can also be made for “consumable medical supplies” (col. 29, lines 64-65) which includes drugs. The display output is dependent upon the user having a password, which is considered to be a specific privilege level that is higher than the privilege level of a user who does not have a password.

Claim 21: See remarks for claim 20, note that the clauses prefaced by the word “if” are optional, and thus do not limit the claim since they are not required to be exercised. The “ranking” of the characteristic is the “% expectancy” shown in FIG. 14.

Claim 22: The ranking of “% expectancy” is also a risk assessment of non-conformance. Conformance is 100% of expectancy, and the percent expectancy shows how far off the physician is from that conformance mark.

Claim 23: In Debusk et al., a “trigger event” is any display of non-conformance, such as the display of 66% expectancy by Dr. Gary Bernard, which is nonconforming. The notification of the trigger event is made to the medical professional viewing the chart.

Claim 24: When a user is logged in, the information is provided after it is received and generated.

Claim 25: The % expectancy in each line of FIG. 14 is a comparison of an answer related to a person (a physician) to a typical answer (the normal standard for a physician). The answer is the number of a particular supply type used and the typical answer is the normal number of that particular supply which is used. The comparison results in a numerical value, such as “66%”

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which is a ranking of how well that physician conforms to the standards of using that particular supply.

Claim 26: The particular person is a physician. The person has a defined privilege level, namely, a password, or no password. A user having a password privilege level can view the results of FIG. 14 which compares at least two physicians.

Claim 27: The answers illustrated in FIG. 14 are shown as being explicitly related to physicians, but are also indirectly related to patients, since the supplies being illustrated are ultimately used on patients. The ranking (“% expectancy”) also corresponds to a level of treatment since a usage of surgical supplies corresponds to an invasive surgical level of treatment, as opposed to other non-invasive levels of treatment.

Claim 28: See remarks for claim 20.

Claim 29: FIG. 14 illustrates the display of two sets of medical information which relate to physicians. The information is not displayed unless the user has the privilege level of having a password. The information shown in FIG. 14 illustrates the comparison of one physician against another.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10, 14-18 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Edelson et al. (U.S. Patent 5,737,539).

Claim 10: Edelson et al. discloses the concepts of obtaining an identification of a user and privilege level by obtaining a password (col. 10, lines 19-30). A user who has a password has a higher privilege level than user who does not have a password. FIG. 2 is a selection template which allows a user to select a particular medical study. Each individual patient record is considered to be a medical study. FIG. 3 illustrates the entry of medical data into each medical study. A clinical algorithm is used for a variety of functions, primarily to display data. One clinical outcome is the display chart shown in FIG. 13, which illustrates a comparison of performance of one physician to another physician. The two physicians compared are the Diagnosing physician and the Resolving Physician, the performance which is recorded is the date the particular physician saw the patient. The clinical data such as show in FIG. 13 is only output to a user having a password. A password is considered to be a higher privilege level and an individual who does not have a password is considered an individual who has a lower privilege level.

Claim 14: The patient's current medical history is produced in section 43 of FIG. 3. This current medical history is produced by asking the patient questions and obtaining an answer and repeating the process until a complete history is obtained.

Claim 15: FIG. 11 illustrates a scenario where data produced from the patient's medical history or input by the physician does not conform to a standard. The trigger event is a pop-up warning about a particular drug, indicating that the drug does not conform to a standard.

Claim 16: The trigger event can be processed based upon data entered by the doctor or provided by the patient in the medical history. After the trigger event is resolved, the doctor can prepare a prescription for the patient (button 80 in FIG. 3).

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Claim 17: If the trigger event occurs for a drug that the patient has described as currently in use, the notification would also have to be made to the patient to stop using the medication. The doctor may then prescribe a different more preferred medication.

Claim 18: The trigger event occurs when any non-conforming prescription data is presented, which can occur at any time ("timing of data entry"). The physician can then change the prescribed medication and present a new prescription to the patient as a result of the trigger event.

Claim 36: See remarks for claim 10 with respect to Edelson et al. Note that two privilege levels exist. One level for an individual with no password, a second level for an individual with a password. The formal titles of those individuals, such as "physician" or "medical director" carries no patentable weight, since the title of a person conducting a set of steps does not change the steps being conducted.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.



Sam Rimell
Primary Examiner
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